

IOWA DEPARTMENT OF NATURAL RESOURCES

ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF: KARL MOLYNEUX 501 W. SECTION ST. WHAT CHEER, IA 50268-1050	ADMINISTRATIVE CONSENT ORDER 2008-SW- 10 2008-AQ- 12
---	---

I. SUMMARY

The Iowa Department of Natural Resources (Department) and Mr. Karl Molyneux hereby agree to the following Administrative Consent Order (Order). Mr. Molyneux agrees to cease and desist from future illegal dumping of solid waste and open burning; to clean up the property where the salvage goods have been burned and ash piles remain; provide the Department with receipts proving proper disposal of this waste and ash; and pay an administrative penalty of \$2,500 to the order of the Iowa Department of Natural Resources. See Sections IV and V for more details.

Any questions regarding this Order should be directed to:

Relating to technical requirements:

Brent A. Earley
Iowa Dept. of Natural Resources, FO#6
1004 W. Madison
Washington, IA 50319
Ph: 319-653-2135

Relating to legal requirements:

Tamara Mullen, Attorney
Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034
Ph: 515/281-8934

II. JURISDICTION

The parties hereby agree that this Order is issued pursuant to Iowa Code section 455B.307 which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code Chapter 455B, Division IV, Part 1 (solid waste) and the rules adopted pursuant to that part; Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code Chapter 455B, Division II (air quality) and the rules promulgated or permits issued pursuant to that part; and Iowa Code

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
Karl Molyneux

section 455B.109 and Department rules in Chapter 567 Iowa Administrative Code (I.A.C.) 10 which authorize the Director to assess administrative penalties up to \$10,000.

III. STATEMENT OF FACTS

The Department and Mr. Molyneux hereby agree to the following statement of facts:

1. Mr. Molyneux owns land located at Section 13, T76N, T13W, on 180th Street in Keokuk County, Iowa, as well as the property located at 501 W. Section Street., What Cheer, Iowa 50268.
2. On June 9, 2005 Field Office (FO) #6 received an anonymous complaint (#06/05-13) alleging the improper disposal of solid waste along the stream bank of Coal Creek at the 180th Street property. This complaint was investigated on July 1, 2005 and resulted in the issuance of a Notice of Violation (NOV) on July 7, 2005 for the illegal dumping of "scrap metal, mobile homes, autos, tires, appliances, farm equipment, and miscellaneous materials." In this NOV Mr. Molyneux was provided excerpts of and citations to the state's open dumping and open burning laws, as well as a list of local recyclers.
3. On October 31, 2005, FO#6 investigated complaint (#10/05-29) alleging another instance of improper solid waste disposal at Mr. Molyneux's 180th Street property. FO#6 observed multiple appliances, engines, fuel tanks, a large area of salvageable materials, and a large pile of garbage and rubbish. Accordingly, on November 4, 2005 Mr. Molyneux was issued a second NOV for violating solid waste (to include appliance demanufacturing) rules, and was informed – also for a second time – that solid waste could not be disposed of via burning.
4. When FO#6 visited the 180th Street property on February 2, 2006 to ascertain compliance with the October NOV's requirements, Mr. Molyneux was issued his third solid waste NOV as all of the conditions were the same as in the previous visit. Mr. Molyneux was informed for the third time that solid waste could not be disposed of by burning.
5. The third NOV required cleanup by March 2006, but this was extended to May 2006 by mutual agreement of the parties. In consideration of Mr. Molyneux's personal affairs, this deadline was extended yet again to June 2006. Although cleanup had not been finished in June, FO#6 agreed to extend the final deadline to October 2006 so long as monthly progress was made. In October 2006, extenuating circumstances lead FO#6 to extend the deadline once more to January 2007, then again to April 2007. These dates show the Department's extreme willingness to work with Mr. Molyneux, in return for which his good faith and future compliance with Department rules was expected.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
Karl Molyneux

6. On September 7, 2007 FO#6 received an anonymous complaint (#9/07-38) alleging Mr. Molyneux was burning copper wires "all day long" resulting in "horrible odors" at his residence on 501 W. Section Street, What Cheer, Keokuk County, Iowa. Attached to the complaint was a photo showing a large pillar of black smoke coming up from behind Mr. Molyneux's house.
7. On October 1, 2007, FO#6 investigated the complaint and sent Mr. Molyneux a letter documenting this visit on October 8, 2007. During the 501 W. Section Street visit, FO#6 "observed and photographed 7 large containers (5 horse troughs) that had large amounts of ash and solid waste that had been burned, large volumes of stockpiled and unburned electric cords and tubing, multiple lead acid batteries and appliances (including air conditioners in various stages of dismantling-without an Appliance Demanufacturing Permit [ADP]) located throughout the yard."
8. In light of the enforcement activity between Mr. Molyneux and the Department between October 2005 and April 2007 concerning solid waste dumping at his 180th Street property, it is irrefutable that Mr. Molyneux is extremely familiar with the State's solid waste and open burning laws and regulations. As such, FO#6 immediately referred Mr. Molyneux to the Department's Legal Services Bureau for enforcement action based upon the open dumping and open burning which has taken place at his 501 W. Section Street property.

IV. CONCLUSIONS OF LAW

The parties hereby agree that the following conclusions of law are applicable to this matter:

1. Iowa Code section 455B.304 provides that the Environmental Protection Commission (Commission) shall establish rules governing the handling and disposal of solid waste. The Commission has adopted such rules at 567 I.A.C. 100 through 121. Iowa Code section 455B.307(1) and 567 I.A.C. 100.4 prohibit dumping or depositing or permitting the dumping or depositing of any solid waste at any place other than a facility permitted by the Department, unless otherwise specified by rule.
2. Solid waste includes "garbage, refuse, rubbish and other similar discarded solid or semisolid materials, including but not limited to such materials resulting from industrial, commercial, agricultural, and domestic activities" Iowa Code 455B.301(20).

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
Karl Molyneux

3. Rubbish is defined as "nonputrescible solid waste consisting of combustible . . . wastes, such as ashes, paper, cardboard . . . yard clippings, wood, [and] glass" 567 I.A.C.100.2.
4. The above-stated facts set out that Mr. Molyneux violated these provisions by having large piles of ash, electrical cords, and tubing on his property.
5. Pursuant to Iowa Code section 455D.10, the "land disposal of lead acid batteries is prohibited." The above-stated facts show Mr. Molyneux violated this provision.
6. 567 I.A.C. Chapter 118 contains the Department's rules on "Discarded Appliance Demanufacturing." Pursuant to 567 I.A.C. 118.2(1), "[a]ll discarded appliances must be demanufactured before disposal of or recycled." Additionally, 567 I.A.C. 118.2(2) requires that "[a] person must obtain an appliance demanufacturing permit (ADP) from the Department . . . before conducting any demanufacturing activities."
7. "Appliances" includes "household and commercial devises such as "air-conditioning units." 567 I.A.C. 118.3.
8. The above-stated facts demonstrate Mr. Molyneux violated these provisions by having partially-dismantled air-conditioning units on his property without being in possession of an ADP.
9. Iowa Code section 455B.133 provides that the Commission shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 I.A.C. 20 through 34 relating to air quality.
10. 567 I.A.C. 23.2(1) prohibits any person from allowing, causing, or permitting open burning of combustible materials, except as provided in 567 I.A.C. 23.2(2) (variances) and 23.2(3) (exemptions).
11. Mr. Molyneux never applied for a variance pursuant to 567 I.A.C. 23.2(2), nor do the electric cords, tubing, batteries, and appliances found on his property qualify for an exemption under 567 I.A.C. 23.2(3). Therefore, the above-stated facts set out that Mr. Molyneux violated the Department's open burning rules.

V. ORDER

THEREFORE, the Department hereby orders and Mr. Molyneux agrees to the following:

1. Mr. Molyneux shall cease and desist from illegal dumping of solid waste and open burning in the future.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
Karl Molyneux

2. Mr. Molyneux shall clean up the property at 501 W. Section Street, What Cheer, Iowa, where the salvage goods have been burned and ash piles remain, and shall provide the Department with landfill and recycling center receipts proving proper disposal of the waste, ash, batteries, and appliances within 40 days of issuance of this Order.
3. Mr. Molyneux shall pay an administrative penalty of \$2,500 to the order of the Iowa Department of Natural Resources within 60 days after issuance of this Order.

VI. PENALTY

1. Iowa Code section 455B.307 authorizes the assessment of civil penalties in Iowa District Court of up to \$5,000 per day of violation for solid waste violations involved in this matter. Additionally, Iowa Code 455B.146 authorizes the assessment of civil penalties up to \$10,000 per day of violation for the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to that provision.
2. Iowa Code sections 455B.109 authorize the Commission to establish by rule a schedule of civil penalties up to \$10,000 which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties. See 567 I.A.C. 10. Pursuant to this rule, the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an Order with a penalty.

ECONOMIC BENEFIT: Mr. Molyneux's economic benefit for not complying with Department rules is based upon the costs saved by avoiding labor, hauling, and tipping fee costs associated with proper disposal. Additionally, the burning of solid waste generally reduces the volume of that waste by more than 50%, decreasing disposal costs proportionally. Therefore, \$750 is assessed for this factor.

GRAVITY: The unregulated open burning of solid waste poses dangers to human health and the environment by releasing toxins and particulates into the air. Additionally, tax dollars were expended to investigate, document, and respond to these violations. As such, \$875 is assessed for this factor.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
Karl Molyneux

CULPABILITY: Mr. Molyneux was subject to Department-supervised open dumping and open burning cleanup activity for over two years. His familiarity with the Department's regulations on-point is irrefutable. Accordingly, his violation of the law in this instance was knowing and intentional. Accordingly, \$875 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS


Iowa Code sections 455B.138 and 455B.308, and 561 I.A.C. 7.5(1), as adopted by reference in 567 I.A.C. chapter 7, authorize a written notice of appeal to the Commission. This Order is entered into knowingly by and with the consent of Mr. Molyneux. By signing this Order all rights to appeal this Order are waived.

VIII. NONCOMPLIANCE

Compliance with Section V of this Order constitutes full satisfaction of all requirements pertaining to the violations described in this Order. Failure to comply with this Order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B.146 and 455B.307.


KARL MOLYNEUX

Dated this 10 day of May, 2008


RICHARD A. LEOPOLD, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 19 day of May, 2008

Karl Molyneux: Field Office 6; Dan Stipe; Dennis Ostwinkle; Brent A. Earley; V.L.C.; VII.C(1).